


City of Alexandria, Virginia

MEMORANDUM

16
11-12-02

DATE: NOVEMBER 5, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: BIG BOX RETAIL USES ORDINANCE

ISSUE: Ordinance to regulate big box retail uses.

RECOMMENDATION: That City Council pass the ordinance on first reading and set it for public hearing, second reading and final passage on Saturday, November 16.

DISCUSSION: At the Council's Saturday October 19 public hearing meeting, Council approved a proposed text amendment to regulate big box retail establishments. Specifically, the ordinance would change the zoning ordinance to require a special use permit for any retail establishment over 20,000 gross square feet in size. Attached is the ordinance adopting the approved text amendment.

One of the issues discussed at Council's hearing was the grandfathering of existing retail establishments that fall within the big box threshold. Examples include grocery stores, the stores at Potomac Yard shopping center, BJ's and others. As to grandfathering, the Council's action included the following specific direction, now included in the language of the attached ordinance:

- any existing retail establishment over 20,000 gross square feet is grandfathered as to the new regulation; it may continue to exist indefinitely without the necessity of obtaining a special use permit;
- grandfathered stores may change ownership without triggering a SUP requirement;
- grandfathered stores may change from one retail use to another retail use without obtaining an SUP;
- grandfathered stores may expand by adding a maximum of 20,000 square feet to the existing store without SUP approval; and
- grandfathered stores, if removed, may be reconstructed up to a maximum size of the size of the prior store plus 20,000 square feet in addition, without triggering the SUP requirement.

Finally, Council asked that staff study the issue of big box regulation in order to determine whether there are other, better ways to regulate their design and operational impacts; discuss its findings with the community and interested parties; and recommend additional regulations if appropriate. Planning staff will initiate this work within the next month or so.

ATTACHMENT: Ordinance

STAFF:

Eileen Fogarty, Director, Planning and Zoning

Introduction and first reading:	11/12/02
Public hearing:	11/16/02
Second reading and enactment:	11/16/02

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sections 4-102 (PERMITTED USES) and 4-103 (SPECIAL USES) under Section 4-100 (CL/COMMERCIAL LOW ZONE), Sections 4-202 (PERMITTED USES) and 4-203 (SPECIAL USES) under Section 4-200 (CC/COMMERCIAL COMMUNITY ZONE), Sections 4-302 (PERMITTED USES) and 4-303 (SPECIAL USES) under Section 4-300 (CSL/COMMERCIAL SERVICE LOW ZONE), Sections 4-402 (PERMITTED USES) and 4-403 (SPECIAL USES) under Section 4-400 (CG/COMMERCIAL GENERAL ZONE), Section 4-502 (PERMITTED USES) and 4-503 (SPECIAL USES) under Section 4-500 (CD/COMMERCIAL DOWNTOWN ZONE), Sections 4-602 (PERMITTED USES) and 4-603 (SPECIAL USES) under Section 4-600 (CD-X/COMMERCIAL DOWNTOWN ZONE-OLD TOWN NORTH), Sections 4-802 (PERMITTED USES) and 4-803 (SPECIAL USES) under Section 4-800 (OC/OFFICE COMMERCIAL ZONE), Sections 4-902 (PERMITTED USES) and 4-903 (SPECIAL USES) under Section 4-900 (OCM(50)/OFFICE COMMERCIAL MEDIUM (50) ZONE), Sections 4-1002 (PERMITTED USES) and 4-1003 (SPECIAL USES) under Section 4-1000 (OCM(100)/OFFICE COMMERCIAL MEDIUM (100) ZONE), Sections 4-1102 (PERMITTED USES) and 4-1103 (SPECIAL USES) under Section 4-1100 (OCH/OFFICE COMMERCIAL HIGH ZONE), and Sections 4-1202 (PERMITTED USES) and 4-1203 (SPECIAL USES) under Section 4-1200 (I/INDUSTRIAL ZONE), all of Article IV (COMMERCIAL, OFFICE AND INDUSTRIAL ZONES); and Sections 5-102 (PERMITTED USES) and 5-103 (SPECIAL USES) under Section 5-100 (CRMU-L/COMMERCIAL RESIDENTIAL MIXED-USED LOW ZONE), Sections 5-202 (PERMITTED USES) and 5-203 (SPECIAL USES) under Section 5-200 (CRMU-M/COMMERCIAL RESIDENTIAL MIXED-USE MEDIUM ZONE), Sections 5-302 (PERMITTED USES) and 5-303 (SPECIAL USES) under Section 5-300 (CRMU-H/COMMERCIAL RESIDENTIAL MIXED-USE HIGH ZONE), all of Article V (MIXED USE ZONES), and to amend and reordain Article XII (NONCOMPLIANCE AND NONCONFORMITY), by adding thereto a new Section 12-601(CERTAIN RETAIL SHOPPING ESTABLISHMENT USES DEEMED GRANDFATHERED OR CONFORMING), all of the City of Alexandria Zoning Ordinance (TA No. 2002-0006).

Summary

The proposed ordinance accomplishes the final adoption of Text Amendment No. 2002-0006, to require a special use permit for retail uses larger than 20,000 square feet in all commercial, office, industrial and mixed use zones in which retail uses do not presently require special use permit approval (except in the CR/Commercial Regional Zone at the Landmark shopping center), and provides grandfathering rules to protect existing uses which do not have special use permit approval.

Sponsor

Department of Planning and Zoning

Staff

Eileen Fogarty, Director of Planning and Zoning
Ignacio B. Pessoa, City Attorney

Authority

§§ 2.04(w), 9.12, Alexandria City Charter
§ 11-800, City of Alexandria Zoning Ordinance

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance

None

EXHIBIT NO. 3

ORDINANCE NO. _____

16
11-12-02

AN ORDINANCE to amend and reordain Sections 4-102 (PERMITTED USES) and 4-103 (SPECIAL USES) under Section 4-100 (CL/COMMERCIAL LOW ZONE), Sections 4-202 (PERMITTED USES) and 4-203 (SPECIAL USES) under Section 4-200 (CC/COMMERCIAL COMMUNITY ZONE), Sections 4-302 (PERMITTED USES) and 4-303 (SPECIAL USES) under Section 4-300 (CSL/COMMERCIAL SERVICE LOW ZONE), Sections 4-402 (PERMITTED USES) and 4-403 (SPECIAL USES) under Section 4-400 (CG/COMMERCIAL GENERAL ZONE), Section 4-502 (PERMITTED USES) and 4-503 (SPECIAL USES) under Section 4-500 (CD/COMMERCIAL DOWNTOWN ZONE), Sections 4-602 (PERMITTED USES) and 4-603 (SPECIAL USES) under Section 4-600 (CD-X/COMMERCIAL DOWNTOWN ZONE-OLD TOWN NORTH), Sections 4-802 (PERMITTED USES) and 4-803 (SPECIAL USES) under Section 4-800 (OC/OFFICE COMMERCIAL ZONE), Sections 4-902 (PERMITTED USES) and 4-903 (SPECIAL USES) under Section 4-900 (OCM(50)/OFFICE COMMERCIAL MEDIUM (50) ZONE), Sections 4-1002 (PERMITTED USES) and 4-1003 (SPECIAL USES) under Section 4-1000 (OCM(100)/OFFICE COMMERCIAL MEDIUM (100) ZONE), Sections 4-1102 (PERMITTED USES) and 4-1103 (SPECIAL USES) under Section 4-1100 (OCH/OFFICE COMMERCIAL HIGH ZONE), and Sections 4-1202 (PERMITTED USES) and 4-1203 (SPECIAL USES) under Section 4-1200 (I/INDUSTRIAL ZONE), all of Article IV (COMMERCIAL, OFFICE AND INDUSTRIAL ZONES); and Sections 5-102 (PERMITTED USES) and 5-103 (SPECIAL USES) under Section 5-100 (CRMU-L/COMMERCIAL RESIDENTIAL MIXED-USED LOW ZONE), Sections 5-202 (PERMITTED USES) and 5-203 (SPECIAL USES) under Section 5-200 (CRMU-M/COMMERCIAL RESIDENTIAL MIXED-USE MEDIUM ZONE), Sections 5-302 (PERMITTED USES) and 5-303 (SPECIAL USES) under Section 5-300 (CRMU-H/COMMERCIAL RESIDENTIAL MIXED-USE HIGH ZONE), all of Article V (MIXED USE ZONES), and to amend and reordain Article XII (NONCOMPLIANCE AND NONCONFORMITY), by adding thereto a new Section 12-601(CERTAIN RETAIL SHOPPING ESTABLISHMENT USES DEEMED GRANDFATHERED OR CONFORMING), all of the City of Alexandria Zoning Ordinance (TA No. 2002-0006).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Sections 4-102, 4-202, 4-302, 4-402, 4-502, 4-602, 4-802, 4-902, 4-1002, 5-102, 5-202 and 5-302 of the City of Alexandria Zoning Ordinance be, and the same hereby are, amended by amending the several subsections thereof which establish a "retail shopping establishment" as a permitted use, the appropriate subsection heading to be assigned by the city attorney in preparing the codification of this ordinance, to read as follows:

() Retail shopping establishment, up to 20,000 gross square feet;

Section 2. That Subsection (M) of Section 4-1102 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

(M) Retail shopping establishment, on the same lot as office use, up to 20,000 gross square feet;

Section 3. That Subsection (V.1) of Section 4-1202 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows; provided, however, that the phrase "shopping establishment" shall be deemed declaratory of existing law:

(V.1) Retail shopping establishment, up to 20,000 gross square feet;

Section 4. That Sections 4-103, 4-203, 4-303, 4-403, 4-503, 4-603, 4-803, 4-903, 4-1003, 4-1203, 5-103, 5-203 and 5-303 of the City of Alexandria Zoning Ordinance be, and the same hereby are, amended by adding thereto a new subsection, the appropriate subsection heading to be assigned by the city attorney in preparing the codification of this ordinance, to read as follows:

() Retail shopping establishment, larger than 20,000 gross square feet;

Section 5. That Section 4-1103 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto a new Subsection (X.1) to read as follows:

(X.1) Retail shopping establishment, on the same lot as office use, larger than 20,000 gross square feet;

Section 6. That Article XII of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto a new Section 12-601, to read as follows:

Sec. 12-601 Certain retail shopping establishment uses deemed grandfathered or conforming.

(A) Rules generally not applicable. The rules in this Article XII for nonconforming and noncomplying uses shall not apply to retail shopping establishments larger than 20,000 gross square feet, which (1) are lawfully in existence on October 19, 2002, and for which no special use permit for the use has been approved prior to such date, or (2) for which a preliminary site plan, but no special use permit for the use, has been approved prior to October 19, 2002, and has not expired. Such uses shall be categorized as grandfathered uses, and shall be governed by the provisions of this Section 12-601. In case of conflict between the provisions of this section and any other provision of this ordinance, the provisions of this section shall control.

(B) Expansion. Physical expansion or enlargement of the use in the amount of 20,000 gross square feet or less is permitted without special use permit approval.

(C) Intensification. Intensification of the use not involving physical expansion or enlargement is permitted without special use permit approval.

(D) Continuation or change in use. The use may be continued by successive owners, and may be changed to a different retail use, without approval of a special use permit. The use may be changed to any other use permitted in the zone in which it is located; provided, however, that if a special use permit is required for such other use by the regulations of such zone, then a special use permit shall be required for such change in use.

(E) Reconstruction. If the building in which the use is located is destroyed, demolished or otherwise removed, the use may be continued in a building reconstructed to the gross square footage which existed at the time of such event, plus an additional amount not to exceed 20,000 gross square feet, without special use permit approval.

(F) Signs, parking and use characteristics. Notwithstanding any other provision of this section, if the characteristics of the use, such as signs, off-street parking and loading, lighting or other features pertaining to the use of land, structures and premises are inconsistent with the regulations of the zone in which the use is located or other applicable regulations of this ordinance, no change to the use or such feature (to include in the case of off-street parking or loading a change or increase in the use served) shall be made which increases the inconsistency or lack of compliance with the zone or other applicable regulations, but a change may be made which decreases such inconsistency, or which complies with the zone and other applicable regulations.

(G) Other changes. Any change to the use other than as expressly permitted in subsections (B) through (F) of this section, and which is otherwise permitted by this ordinance, shall require special use permit approval for the entire use.

(H) Abandonment. In the event that, after October 19, 2002, the use ceases actual retail operation for a period of five consecutive years or more, the grandfathered status of the use shall terminate, and the use of the property shall thereafter conform to the use regulations of the zone in which it is located.

(I) FAR, height, etc. not affected. Nothing in this section shall be deemed to permit any increase in floor area ratio, height or other regulation expressed as a maximum, nor to permit any reduction in required parking, setbacks, open space or other regulation expressed as a minimum, otherwise applicable to the use under this ordinance.

(J) Site plan required. Nothing in this section shall be deemed to excuse the requirement for a site plan pursuant to Section 11-400 of this ordinance.

(K) Conforming uses. Retail shopping establishments larger than 20,000 gross square feet, which (1) are lawfully in existence on October 19, 2002, and for which a special use permit for the use has been approved prior to such date, or (2) for which a special use permit for the use has been approved prior to October 19, 2002, and has not expired shall be categorized as conforming uses; shall not be subject to the provisions of this section, and shall be subject to the terms and conditions of the special use permit.

Section 7. That Sections 4-102, 4-103, 4-202, 4-203, 4-302, 4-303, 4-402, 4-403, 4-502, 4-503, 4-602, 4-603, 4-802, 4-803, 4-903, 4-1002, 4-1003, 4-1102, 4-1103, 4-1202, 4-1203, 5-102, 5-103, 5-202, 5-203, 5-302, 5-303, and Article XII of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

Section 8. That this ordinance shall become effective upon the date and at the time of its final passage, and shall apply to all applications for land use or land development approval provided for under the City of Alexandria Zoning Ordinance which are filed on and after October

19, 2002, and are pending on and after the effective date before any city department, agency or board, or before city council, or on judicial review, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of said ordinance.

KERRY J. DONLEY
Mayor

Introduction: 11/12/02
First Reading: 11/12/02
Publication:
Public Hearing:
Second Reading:
Final Passage:

Public Hearing will be held by the City Council of the City of Alexandria, Virginia, in the Council Chamber, City Hall, City of Alexandria, Virginia, on Saturday, November 16, 2002, at 9:30 a.m., or as soon thereafter as may be heard on the hereinafter described ordinances.

TITLE OF ORDINANCE

AN ORDINANCE to amend and reordain Sections 4-102 (PERMITTED USES) and 4-103 (SPECIAL USES) under Section 4-100 (CL/COMMERCIAL LOW ZONE), Sections 4-202 (PERMITTED USES) and 4-203 (SPECIAL USES) under Section 4-200 (CC/COMMERCIAL COMMUNITY ZONE), Sections 4-302 (PERMITTED USES) and 4-303 (SPECIAL USES) under Section 4-300 (CSL/COMMERCIAL SERVICE LOW ZONE), Sections 4-402 (PERMITTED USES) and 4-403 (SPECIAL USES) under Section 4-400 (CG/COMMERCIAL GENERAL ZONE), Section 4-502 (PERMITTED USES) and 4-503 (SPECIAL USES) under Section 4-500 (CD/COMMERCIAL DOWNTOWN ZONE), Sections 4-602 (PERMITTED USES) and 4-603 (SPECIAL USES) under Section 4-600 (CD-X/COMMERCIAL DOWNTOWN ZONE-OLD TOWN NORTH), Sections 4-802 (PERMITTED USES) and 4-803 (SPECIAL USES) under Section 4-800 (OC/OFFICE COMMERCIAL ZONE), Sections 4-902 (PERMITTED USES) and 4-903 (SPECIAL USES) under Section 4-900 (OCM(50)/OFFICE COMMERCIAL MEDIUM (50) ZONE), Sections 4-1002 (PERMITTED USES) and 4-1003 (SPECIAL USES) under Section 4-1000 (OCM(100)/OFFICE COMMERCIAL MEDIUM (100) ZONE), Sections 4-1102 (PERMITTED USES) and 4-1103 (SPECIAL USES) under Section 4-1100 (OCH/OFFICE COMMERCIAL HIGH ZONE), and Sections 4-1202 (PERMITTED USES) and 4-1203 (SPECIAL USES) under Section 4-1200 (I/INDUSTRIAL ZONE), all of Article IV (COMMERCIAL, OFFICE AND INDUSTRIAL ZONES); and Sections 5-102 (PERMITTED USES) and 5-103 (SPECIAL USES) under Section 5-100 (CRMU-L/COMMERCIAL RESIDENTIAL MIXED-USED LOW ZONE), Sections 5-202 (PERMITTED USES) and 5-203 (SPECIAL USES) under Section 5-200 (CRMU-M/COMMERCIAL RESIDENTIAL MIXED-USE MEDIUM ZONE), Sections 5-302 (PERMITTED USES) and 5-303 (SPECIAL USES) under Section 5-300 (CRMU-H/COMMERCIAL RESIDENTIAL MIXED-USE HIGH ZONE), all of Article V (MIXED USE ZONES), and to amend and reordain Article XII (NONCOMPLIANCE AND NONCONFORMITY), by adding thereto a new Section 12-601 (CERTAIN RETAIL SHOPPING ESTABLISHMENT USES DEEMED GRANDFATHERED OR CONFORMING), all of the City of Alexandria Zoning Ordinance (TA No. 2002-0006).

The proposed ordinance accomplishes the final adoption of Text Amendment No. 2002-0006, to require a special use permit for retail uses larger than 20,000 square feet in all commercial, office, industrial and mixed use zones in which retail uses do not presently require special use permit approval (except in the CR/Commercial Regional Zone at the Landmark shopping center), and provides grandfathering rules to protect existing uses which do not have special use permit approval.

TITLE OF ORDINANCE

AN ORDINANCE to amend and reordain Section 7-1800 (INSTALLATION OF ATM AND SIMILAR MACHINES ON THE EXTERIOR OF BUILDINGS IN THE HISTORIC DISTRICTS), of Article VII (SUPPLEMENTAL REGULATIONS), of the City of Alexandria Zoning Ordinance (TA NO. 2002-0004). The proposed ordinance accomplishes the final adoption of Text Amendment No. 2002-0004, to revise the automatic teller (ATM) regulations applicable within the Old and Historic Alexandria and Parker-Gray Districts.

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TITLE OF ORDINANCE

AN ORDINANCE to amend and reordain Section 5-606 (FINAL DEVELOPMENT PLAN APPROVAL), under Section 5-600 (CDD/COORDINATED DEVELOPMENT DISTRICT) of Article V (MIXED USE ZONES); Section 11-303 (ADDITIONAL NOTICE REQUIRED), under Section 11-300 (NOTICE OF PUBLIC HEARINGS) of Division A (ADMINISTRATION AND ENFORCEMENT OF ORDINANCE AND NOTICE OF PUBLIC HEARINGS); Section 11-406 (CONTENTS OF PRELIMINARY SITE PLAN APPLICATIONS), Section 11-407 (PROCEDURES FOR PROCESSING SITE PLAN APPLICATION) and Section 11-409 (ACTION ON SITE PLANS), and to repeal Section 11-408 (NOTICE OF SITE PLAN COORDINATING COMMITTEE), under Section 11-400 (SITE PLAN) of Division B (DEVELOPMENT APPROVALS, all of Article XI (DEVELOPMENT APPROVALS AND PROCEDURES) of the City of Alexandria Zoning Ordinance (TA NO. 2002-0005).

The proposed ordinance accomplishes the final adoption of Text Amendment No. 2002-0005, to revise procedures related to the processing of development plan applications.

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TITLE OF ORDINANCE

AN ORDINANCE to amend and reordain section 2-1-4 (COMPENSATION OF MEMBERS) of Article A (GENERAL PROVISIONS), Chapter 1 (THE CITY COUNCIL), Title 2 (GENERAL GOVERNMENT), of The Code of the City of Alexandria, Virginia, 1981, as amended.

The proposed ordinance increases the compensation of the mayor from \$25,000 to \$30,500 per year, and of the members of city council from \$20,000 to \$27,500, and provides that the mayor and council members are eligible for the same benefits (other than participation in the Virginia Retirement System) as are provided to full-time city employees. The proposed ordinance also calls for a review of such compensation, every three years and prior to the next ensuing council election, for the purpose of considering a cost-of-living increase in line with that afforded city employees

over the three-year period. These changes are commensurate with the compensation and benefits provided for the chairman and members of the Arlington County Board, and will take effect on July 1, 2003, when the mayor or council members elected on May 6, 2002, take office.

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TITLE OF ORDINANCE

AN ORDINANCE to amend and reordain the 1992 Master Plan (1998 ed.) of the City of Alexandria, Virginia, by adopting and incorporating therein the amendment heretofore approved by city council to such master plan as Master Plan Amendment No. 2002-0003 and no other amendments, and to repeal all provisions of the said master plan as may be inconsistent with such amendment.

The proposed ordinance accomplishes the final adoption of Master Plan Amendment No. 2002-0003 by changing the land use designation of the property at 1700 Duke Street from CDD/Office/First/Second Floor Retail to CDD/Office/Residential/First/Second Floor Retail.

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TITLE OF ORDINANCE

AN ORDINANCE to vacate a portion of the public street right-of-way at 1700 Duke Street, in the City of Alexandria, Virginia.

The proposed ordinance vacates a 2,606 square foot triangular shaped portion of the public right-of-way at 1700 Duke Street, in the City of Alexandria, Virginia.

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TITLE OF ORDINANCE

AN ORDINANCE to vacate the public street right-of-way easement of South Street, in the City of Alexandria, Virginia.

The proposed ordinance vacates the public right-of-way easement of South Street, between South Washington Street and South Royal Street, in the City of Alexandria, Virginia.

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TITLE OF ORDINANCE

AN ORDINANCE making provision for the support of the government of the City of Alexandria, Virginia, and for the payment of municipal expenditures by providing supplemental appropriations of amounts required to defray certain expenditures and liabilities of the city

for fiscal year 2003, which began on the first day of July 2002 and ends on the thirtieth day of June 2003. The proposed ordinance makes a supplemental appropriation of funds for the operation of city government in fiscal year 2003.

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THE PUBLIC IS ADVISED THAT AMENDMENTS OR ADDITIONS MAY BE MADE TO PROPOSED ORDINANCES WITHOUT FURTHER PUBLICATION. IT IS RECOMMENDED THAT PERSONS INTERESTED IN ANY OF THESE ORDINANCES OBTAIN FREE FULL-TEXT COPIES FROM THE CITY CLERK AT CITY HALL. BEVERLY I. JETT, CMC, CITY CLERK

To be published in the:

Northern Virginia Journal on Thursday, November 14, 2002
Alexandria Gazette Packet on Thursday, November 14, 2002